

# EXHIBIT 141

Reed, Larry - Vol. II

September 27, 2007

Baltimore, MD

Page 329

UNITED STATES DISTRICT COURT  
OF THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO :  
U.S. ex rel. Ven-A-Care of : Judge Patti B.  
The Florida Keys, Inc., : Saris  
Plaintiff, :  
vs. :  
ABBOTT LABORATORIES, INC., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.  
Defendants. : Bowler

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VOLUME II

Baltimore, Maryland

Thursday, September 27, 2007

Continued Videotape Deposition of:

LARRY REED,

the witness, was called for examination by counsel  
for the Defendants, pursuant to notice, commencing

Reed, Larry - Vol. II

September 27, 2007

Baltimore, MD

<p style="text-align: right;">Page 350</p> <p>1 BY MR. TORBORG:</p> <p>2 Q. Again, Mr. Reed, welcome back. Before</p> <p>3 I get started with the questioning, I wanted to</p> <p>4 do two housecleaning matters with counsel.</p> <p>5 The first relates to the assertion by</p> <p>6 the government of a privilege under 6(c) of the</p> <p>7 grand jury -- of the Federal Rules of Criminal</p> <p>8 Procedure, and Mr. Reed was instructed not to</p> <p>9 answer regarding his testimony before a grand</p> <p>10 jury, and I -- prior to today's deposition, I</p> <p>11 reviewed with counsel for the United States Rule</p> <p>12 6(c), which provides that the secrecy of grand</p> <p>13 jury testimony does not apply to witnesses.</p> <p>14 In fact, the 1972 comment to that rule</p> <p>15 specifically says the rule does not impose any</p> <p>16 obligation of secrecy on witnesses. The existing</p> <p>17 practice on this point varies among the</p> <p>18 districts. The seal of secrecy of witnesses seems</p> <p>19 an unnecessary hardship and may lead to injustice</p> <p>20 if a witness is not permitted to make a</p> <p>21 disclosure to counsel or to associate.</p> <p>22 So I understand, and I've discussed</p>	<p style="text-align: right;">Page 352</p> <p>1 MS. MARTINEZ: We're working on that,</p> <p>2 and we'll be happy to discuss that with you more</p> <p>3 off the record.</p> <p>4 MR. TORBORG: Okay. So as we sit here</p> <p>5 today, taking the second day of Mr. Reed's</p> <p>6 deposition, there are still potential documents</p> <p>7 out there from his files, correct?</p> <p>8 MS. MARTINEZ: Potentially. I mean,</p> <p>9 some of these may have already been produced, but</p> <p>10 we are working on making sure that anything in</p> <p>11 the electronic documents is produced.</p> <p>12 MR. TORBORG: Okay. Thank you.</p> <p>13 BY MR. TORBORG:</p> <p>14 Q. Mr. Reed, yesterday we talked a bit</p> <p>15 about the confidentiality provisions of the AMP</p> <p>16 data contained in the OBRA legislation of 1990.</p> <p>17 Do you recall that discussion?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And I stated yesterday, I</p> <p>20 believe you agreed with me, that the legislation</p> <p>21 itself limited the information -- the disclosure</p> <p>22 of that information to CMS, the states, and</p>
<p style="text-align: right;">Page 351</p> <p>1 this with counsel, and we're not going to argue</p> <p>2 about it here today, but I understand they're</p> <p>3 still going to instruct the witness not to answer</p> <p>4 any questions about that testimony, and then you</p> <p>5 will review the issue and then have an answer for</p> <p>6 us next time we come back.</p> <p>7 MS. MARTINEZ: Yes, we're going to</p> <p>8 assert the investigatory files law enforcement</p> <p>9 privilege.</p> <p>10 MR. TORBORG: Okay. Thank you.</p> <p>11 Secondly, the second housekeeping</p> <p>12 matter I wanted to talk about with counsel was in</p> <p>13 our meet and confers, we had discussed searching</p> <p>14 Mr. Reed's e-mails for certain terms, and I had</p> <p>15 sent you a list of those terms that we had asked</p> <p>16 for you to review.</p> <p>17 And I don't know if that's been done,</p> <p>18 if a search of Mr. Reed's e-mails have been done</p> <p>19 with those terms or any other terms, so I'd like</p> <p>20 to get an understanding of if there will be more</p> <p>21 documents from Mr. Reed being produced and if</p> <p>22 those searches will be done.</p>	<p style="text-align: right;">Page 353</p> <p>1 certain contractors; is that right?</p> <p>2 A. Contractors for the states, that's</p> <p>3 correct.</p> <p>4 Q. Correct. And after a consultation that</p> <p>5 CMS had with representatives of the states, some</p> <p>6 manufacturers and some pharmacy provider advocacy</p> <p>7 groups, a decision was made that the AMP</p> <p>8 information would not be shared with the states.</p> <p>9 Is that a fair summary of your</p> <p>10 testimony?</p> <p>11 A. Yeah, that's correct.</p> <p>12 Q. Okay. And did you have an</p> <p>13 understanding of why it was that the information</p> <p>14 was made confidential in the legislation to begin</p> <p>15 with?</p> <p>16 You were involved in drafting that</p> <p>17 legislation, correct?</p> <p>18 A. I was involved in providing comments</p> <p>19 back to managers within CMS on that legislation,</p> <p>20 correct.</p> <p>21 Q. Okay. Do you have an understanding of</p> <p>22 why it is that the information was to be kept</p>

7 (Pages 350 to 353)

Reed, Larry - Vol. II

September 27, 2007

Baltimore, MD

Page 570	Page 572
<p>1 a state -- what a state might do to reflect that.</p> <p>2 Q. And what goes into a reasonable</p> <p>3 dispensing fee?</p> <p>4 A. In accordance with what's in the final</p> <p>5 regulation?</p> <p>6 Q. Yes.</p> <p>7 A. I don't know. I don't have that</p> <p>8 document here.</p> <p>9 Q. If we can go to Exhibit Abbott 284</p> <p>10 again, in particular, Bates page ending 681,</p> <p>11 there's a section on the far left column titled,</p> <p>12 "Dispensing Fees, Section F."</p> <p>13 Do you see that?</p> <p>14 A. I do, Section F.</p> <p>15 Q. There's a comment that says, "Several</p> <p>16 commenters suggested that we either delete the</p> <p>17 requirement in current regulations for state</p> <p>18 surveys of dispensing fee costs or require state</p> <p>19 agencies to update their fees in a periodic</p> <p>20 manner," and HCFA provided a response.</p> <p>21 The last sentence on that page states,</p> <p>22 "We expect that most states will continue their</p>	<p>1 chief in charge of the division that was looking</p> <p>2 at these Medicaid issues? What was your</p> <p>3 understanding about whether or not a state's</p> <p>4 reasonable dispensing fee could include a profit</p> <p>5 component?</p> <p>6 A. I don't think that we addressed that in</p> <p>7 any program instructions. I don't think that we</p> <p>8 put anything else out on that.</p> <p>9 Q. Did you believe that a dispensing fee</p> <p>10 that did not include a component of profit would</p> <p>11 be reasonable?</p> <p>12 A. A dispensing fee that would cover the</p> <p>13 cost of dispensing a drug would cover -- again,</p> <p>14 it would cover the cost of dispensing a drug and,</p> <p>15 by its nature, would have a profit piece in it.</p> <p>16 Q. And what -- I don't think I understand</p> <p>17 that.</p> <p>18 A. That's okay. I think -- should I go</p> <p>19 ahead?</p> <p>20 Q. Does the -- I'm not sure I understood</p> <p>21 your comment that a dispensing fee that includes</p> <p>22 overhead and covers cost would include profit.</p>
Page 571	Page 573
<p>1 present activities to establish a reasonable</p> <p>2 dispensing fee level and will document these and</p> <p>3 any new activities in their state plan. Such</p> <p>4 activities could include, (1), audits and surveys</p> <p>5 of pharmacy operational costs; (2), compilation</p> <p>6 of data regarding professional salaries and fees;</p> <p>7 and (3), analysis of compiled data regarding</p> <p>8 pharmacy overhead costs, profits, et cetera."</p> <p>9 Do you recall, Mr. Reed, if it was</p> <p>10 HCFA's understanding of the regulations that a</p> <p>11 dispensing fee could include a component for</p> <p>12 profit for the pharmacy?</p> <p>13 A. Are you referring to these 1987</p> <p>14 regulations --</p> <p>15 Q. Yes.</p> <p>16 A. -- the part that you just read?</p> <p>17 Q. Yes.</p> <p>18 A. I -- this was before I was working in</p> <p>19 this area, so I don't have any information on</p> <p>20 that.</p> <p>21 Q. Okay. How about in your time from 19,</p> <p>22 roughly, 90 throughout the 1990s as the branch</p>	<p>1 Would you explain that to me a little</p> <p>2 bit?</p> <p>3 A. I -- in the Medicaid program in</p> <p>4 general, I don't know that we have separate line</p> <p>5 items that would say profit and then have a</p> <p>6 number that would be put in by the state, and I</p> <p>7 don't think we had that here.</p> <p>8 Q. But you recall discussing with states</p> <p>9 in approving state plans or disapproving state</p> <p>10 plans the issue of whether or not a profit could</p> <p>11 be included in the dispensing fee, right?</p> <p>12 A. The issue would be whether or not the</p> <p>13 dispensing fee would be reasonable. I don't</p> <p>14 recall if we discussed if that reasonable -- if</p> <p>15 we discussed profit within that term</p> <p>16 "reasonable."</p> <p>17 Q. You would agree with me that a pharmacy</p> <p>18 needs to make a return on its investment when</p> <p>19 serving Medicaid beneficiaries, would you not?</p> <p>20 MR. HERNANDEZ: Objection, form.</p> <p>21 MS. MARTINEZ: Objection, form.</p> <p>22 THE WITNESS: And, again, I would say</p>

62 (Pages 570 to 573)

Reed, Larry - Vol. II

September 27, 2007

Baltimore, MD

Page 574	Page 576
<p>1 that under Medicaid federal regulations that the 2 state must determine a reasonable dispensing fee. 3 BY MR. TORBORG: 4 Q. Did HCFA have a position on whether or 5 not a dispensing fee that did not include a 6 profit component was a reasonable dispensing fee? 7 MS. MARTINEZ: Objection, form. 8 THE WITNESS: Is your question did we 9 put out a policy on whether or not a reasonable 10 dispensing fee needed to include profit? 11 BY MR. TORBORG: 12 Q. I think my question was a little 13 broader than that, and that was whether or not 14 HCFA had a view on the matter. 15 MS. MARTINEZ: Objection, form. 16 THE WITNESS: I don't know that I can 17 speak for all of HCFA here. 18 BY MR. TORBORG: 19 Q. Can you speak for your office? 20 MS. MARTINEZ: Objection, form. 21 THE WITNESS: I don't recall a view on 22 whether or not profit was viewed as part of -- if</p>	<p>1 not a reason -- whether or not a dispensing fee 2 that did not include some level of profit would 3 be reasonable? 4 MR. HERNANDEZ: Objection, form. 5 THE WITNESS: And, again, a dispensing 6 fee that covered the cost of dispensing that 7 drug, including the overhead, including some of 8 the things that you mentioned here, would be one 9 that would be reasonable, what -- would be one 10 that would keep the pharmacy in business so that 11 it could keep dispensing drugs. 12 BY MR. TORBORG: 13 Q. If we could go back to -- 14 Actually, I think I need to take a 15 break for a tape change. 16 THE VIDEOGRAPHER: This marks the end 17 of Tape 4 of Volume II of the deposition of Larry 18 Reed. 19 Going off the record. The time is 20 15:51:26. 21 (A break was taken.) 22 THE VIDEOGRAPHER: This marks the</p>
Page 575	Page 577
<p>1 we put any -- if we discussed profit as part of a 2 reasonable dispensing fee. 3 BY MR. TORBORG: 4 Q. Mr. Reed, did you believe that a 5 dispensing fee that did not include a component 6 of profit would be a reasonable dispensing fee? 7 MS. MARTINEZ: Objection, form. 8 THE WITNESS: A dispensing fee, again, 9 that would cover the cost to the pharmacy, all 10 the costs of dispensing the drug, the overhead 11 costs, the costs of the pharmacist, could by 12 itself be a reasonable dispensing fee. 13 BY MR. TORBORG: 14 Q. Do you understand my question? 15 A. I understand your question. I just 16 can't answer it better than that. 17 Q. You can't answer it yes or no? 18 MR. HERNANDEZ: Objection, form. 19 BY MR. TORBORG: 20 Q. Is that right? 21 A. Give me your question again. 22 Q. Did you have a view about whether or</p>	<p>1 beginning of Tape 5 of Volume II of the 2 deposition of Larry Reed. 3 Going back on the record. The time is 4 16:05:29. 5 BY MR. TORBORG: 6 Q. Welcome back, Mr. Reed. 7 A. Thank you. 8 Q. We were talking about dispensing fees 9 and state Medicaid programs when we broke, and we 10 were talking specifically about the issue of 11 profit. 12 If a profit component was, in fact, 13 necessary to keep pharmacies in a particular 14 state Medicaid program, then profits would be 15 required in a reasonable dispensing fee, correct? 16 MS. MARTINEZ: Objection to form. 17 MR. HERNANDEZ: Objection to form. 18 THE WITNESS: The profit would have 19 been built into the other costs that went into -- 20 or could have been built into the other costs 21 that went into the components of the dispensing 22 fee, and if that -- if those profits then were</p>

63 (Pages 574 to 577)

Reed, Larry - Vol. II

September 27, 2007

Baltimore, MD

<p style="text-align: right;">Page 578</p> <p>1 what kept that pharmacy in business, if that</p> <p>2 profit -- if those profits within those</p> <p>3 components were what the state used to determine</p> <p>4 a reasonable dispensing fee, I think that -- I</p> <p>5 think that probably would have been acceptable.</p> <p>6 BY MR. TORBORG:</p> <p>7 Q. You're familiar with the regulation</p> <p>8 from Medicaid that requires states to develop</p> <p>9 reimbursement formulas that ensure equal access</p> <p>10 to care for Medicaid beneficiaries, correct?</p> <p>11 MS. MARTINEZ: Objection, form.</p> <p>12 THE WITNESS: I would have to say that</p> <p>13 I'm not very familiar with them. I have some</p> <p>14 general understanding, but not a lot.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. And do you recall there being times</p> <p>17 when that regulation sort of bumped up against</p> <p>18 other regulations, such as the need to reimburse</p> <p>19 ingredient cost in accordance with estimated</p> <p>20 acquisition cost?</p> <p>21 MS. MARTINEZ: Objection, form.</p> <p>22 THE WITNESS: And unfortunately, I</p>	<p style="text-align: right;">Page 580</p> <p>1 Q. And do you recall that that difference</p> <p>2 -- well, let me back up, lay a foundation.</p> <p>3 You recall that OIG repeated this</p> <p>4 project with different states about 5 years</p> <p>5 later, correct?</p> <p>6 A. After 1996?</p> <p>7 Q. Yes.</p> <p>8 A. I don't recall that, no.</p> <p>9 Q. All right. Let me then show you a</p> <p>10 document, see if it refreshes your recollection</p> <p>11 on that.</p> <p>12 Mark this as our next exhibit, please.</p> <p>13 (Deposition Exhibit Abbott 329 was</p> <p>14 marked for identification.)</p> <p>15 MR. TORBORG: For the record, what I've</p> <p>16 marked as Exhibit Abbott 329 bears the Bates</p> <p>17 numbers HHD014-0764 through 82, appears to be a</p> <p>18 cover letter from Janet Rehnquist, Inspector</p> <p>19 General, to Thomas Scully, with the subject</p> <p>20 "Medicaid Pharmacy - Actual Acquisition Cost of</p> <p>21 Generic Prescription Drug Products."</p> <p>22 If you would take a look at that, Mr.</p>
<p style="text-align: right;">Page 579</p> <p>1 would need to know what that regulation said. My</p> <p>2 knowledge is limited, so I don't even know what</p> <p>3 that says.</p> <p>4 BY MR. TORBORG:</p> <p>5 Q. Okay. We can revisit that next time.</p> <p>6 And we talked earlier about the</p> <p>7 approval of state plans during your time at HCFA,</p> <p>8 now CMS, and you knew from OIG's work that the</p> <p>9 AWP -- the difference between AWP and acquisition</p> <p>10 costs for generic drugs could be significant,</p> <p>11 right?</p> <p>12 MS. MARTINEZ: Objection, form.</p> <p>13 THE WITNESS: Can you further clarify</p> <p>14 your question? By "significant," what do you</p> <p>15 mean by "significant"?</p> <p>16 BY MR. TORBORG:</p> <p>17 Q. Well, in the OIG's 1996 work, they</p> <p>18 determined on a national level that the</p> <p>19 difference was about 42.5 percent; is that right?</p> <p>20 A. I do know that they did report the</p> <p>21 numbers we talked about previously, 42 point</p> <p>22 whatever percent that was, correct.</p>	<p style="text-align: right;">Page 581</p> <p>1 Reed, that and the study.</p> <p>2 THE WITNESS: Okay.</p> <p>3 BY MR. TORBORG:</p> <p>4 Q. Okay. After having a chance to review</p> <p>5 that, Mr. Reed, do you recall the work that OIG</p> <p>6 did in the 2000-2001 time frame that was sort of</p> <p>7 a repeat of the work they had done in 1995-1996</p> <p>8 to compare AWP and actual acquisition cost for a</p> <p>9 number of state Medicaid programs?</p> <p>10 A. I do recall the report that reflects</p> <p>11 that work, this report.</p> <p>12 Q. Okay. And the bottom of the first page</p> <p>13 of the report, the OIG -- well, let me -- strike</p> <p>14 that.</p> <p>15 Is it your understanding that this</p> <p>16 particular document that I've shown you</p> <p>17 summarizes the results of the 8-state survey?</p> <p>18 A. Reading from the bottom paragraph, I do</p> <p>19 understand that they looked at pharmacies in 8</p> <p>20 states that they identify in that paragraph.</p> <p>21 Q. And at the end of the paragraph, OIG</p> <p>22 wrote, "We estimated that, nationally, actual</p>

64 (Pages 578 to 581)